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PROVISIONAL SUMMARY RECORD OF THE 49th MEETING

Held at Headquarters, New York,
on Wednesday, 5 August 1998, at 10.30 a.m.

President: Mr. CHOWDHURY (Vice-President) (Bangladesh)

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The meeting was called to order at 10.50 a.m.

SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS (continued) (E/1998/94 and Add.1, E/1998/L.49)

The PRESIDENT introduced the draft decision contained in document E/1998/L.49. He stressed the urgency of referring the case to the International Court of Justice and requesting that the Malaysian Government stay proceedings until the Court had issued an opinion.

Mr. REYES RODRÍGUEZ (Cuba) said that his delegation would like to amend operative paragraph 1 by deleting from lines 7 to 9 "in the circumstances ... in this case." That section could be included as a last preambular paragraph and would then read "Taking note of the circumstances ... in this case;". He believed that the reference to the note by the Secretary-General (E/1998/94) might prejudge the Court's decision. Moreover, each party would in any case have an opportunity to explain its position.

In operative paragraph 2, "Calls upon" should be replaced by "invites".

Mr. HYNES (Canada) said that it would be difficult to accept any changes to the text without consultations concerning the legal implications. With regard to operative paragraph 1, it was important to retain the reference to the note by the Secretary-General in order to provide the Court with the basic facts to which to refer in making its decision.

Mr. LAVALLE-VALDÉS (Observer for Guatemala) agreed with the representative of Canada that it was important to retain the reference to the note of the Secretary-General in operative paragraph 1, although he felt that it could be amended to read "paragraphs 4 to 15" since paragraphs 1 to 3 only provided background information.

Mr. REYES RODRÍGUEZ (Cuba) pointed out that his delegation had not participated in the drafting or adoption of the note by the Secretary-General, which simply represented the point of view of the Secretary-General. The operative paragraph as it stood conferred legal status on the note and his delegation therefore could not agree to retain it since that would tend to prejudge the deliberations of the Court.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, said that it would be difficult to make changes to the text without further consultations and instructions from Governments. It was his opinion that the text should stand as written since it was very important that reference be made to the note by the Secretary-General; the note explained the circumstances of the case, and the opinions it expressed were certainly not binding on the Court. The Court would base its opinion on the presentations by the parties. It was also important to retain the reference to the "legal obligations of Malaysia" at the end of operative paragraph 1.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs), speaking on behalf of the Secretary-General, stressed the importance of retaining the reference to the circumstances of the case in operative paragraph 1, since the phrasing was not binding on the other party, which had in any case approved the text. In addition, the deletion of the reference to the legal obligations of Malaysia would strip the referral to the Court of all meaning. He reiterated that the Secretary-General felt that it was imperative that the text stand as written. With reference to the amendment suggested by Guatemala, he believed it important that the original text be retained since paragraphs 1 to 3 contributed to the explanation of the facts.

Mr. KAMITANI (Japan) said that his delegation supported the draft decision as read and that any changes would require consultations, which would further delay a resolution of the dispute.

Mr. REYES RODRÍGUEZ (Cuba) suggested, with reference to operative paragraph 1, that a possible compromise might be simply to substitute "taking note of" for "in" before "circumstances" in the last part of operative paragraph 1.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that that amendment to operative paragraph 1 would be acceptable. In operative paragraph 2, the Secretary-General would prefer to use the stronger verb "calls upon".

Mr. XIE Bohua (China) asked how long it was expected to take for the International Court of Justice to issue its opinion and whether Malaysia was under any obligation, as a State party to the Convention on the Privileges and Immunities of the United Nations, to stay the actions in its courts pending the rendering of that opinion.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, said that the Union could accept the proposed amendment to paragraph 1. It would prefer to leave paragraph 2 as drafted.

Mr. PFIRTER (Observer for Switzerland) said that perhaps the difficulty lay in the translation, in that the word "Exhorta", used in the Spanish version, was stronger than the terms used in English and French.

Mr. AZLAN (Observer for Malaysia) reiterated that his delegation had noted three factual errors in the note by the Secretary-General. With regard to the last sentence of paragraph 7, the Minister of Foreign Affairs had not refused to amend his certificate, but had been unable to do so. Turning to paragraph 14, the Government of Malaysia had not insisted that Maitre Fortier should return to Kuala Lumpur, but rather, had requested him to do so. Finally, referring to paragraph 15, he said that the Government of Malaysia would prepare its own submission to the International Court of Justice.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that, based on material made available to the Office of Legal Affairs by the International Court of Justice, the case would be considered as a priority and would be taken up in the fall of 1998. In reply to the representative of China, staying the proceedings was not an obligation of the State party under the Convention, and did not imply termination of the proceedings, but simply suspending them until the advisory opinion was received. In the early stages of the negotiations with the Government of Malaysia, they had stayed the proceedings. Any action by the Malaysian courts, however, would prejudge the opinion of the International Court of Justice.

Mr. REYES RODRÍGUEZ (Cuba) asked whether all language versions of the text of the draft resolution had equal validity.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that all the official language versions had equal value. However, in the event of a difference in meaning the Court could use the original language, which in that case was English.

The meeting was suspended at 11:40 a.m. and resumed at 11.55 a.m.

In the light of an exchange of views in which Canada, Guatemala, Austria and Switzerland took part, Mr. REYES RODRÍGUEZ (Cuba) proposed that in paragraph 2, the word "Exhorta" should be replaced by "Invita" in the Spanish version only. The English text would remain unchanged.

Ms. MESDOUA (Algeria) said that the same amendment should be made in the Arabic version of the draft decision.

Draft decision E/1998/L.49 was adopted as amended.

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued) (E/1998/96, E/1998/L.47)

The PRESIDENT said that the Council had not been in a position to adopt formally the draft decision on themes for the 1999 substantive session of the Economic and Social Council at its previous meeting because the related note by the Secretary-General, E/1998/96, had not been available in all the official languages.

Draft decision E/1998/L.47 was formally adopted.

SUSPENSION OF THE RESUMED 1998 SUBSTANTIVE SESSION

The PRESIDENT declared suspended the 1998 resumed substantive session of the Economic and Social Council.

The meeting rose at 12.10 p.m.